No. 75-1261

In the Supreme Court of the United States

OCTOBER TERM, 1976

JOHN A. KNEBEL, SECRETARY OF AGRICULTURE, APPELLANT

v.

KAREN HEIN, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA

REPLY BRIEF FOR THE APPELLANT

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Appellees reiterate throughout their brief, as the factual basis on which their analysis rests, that this case involves only the treatment, under the Secretary's food stamp regulations, of an "allowance * * * that is not available for diversion to food purchases or other ordinary household expenses" (*e.g.*, Br. 24). This persistent assertion is contrary to fact. The training allowance received by appellees manifestly is available for diversion to food purchases and other ordinary household expenses: although appellees characterize the allowance as being "for necessary travel" (see, *e.g.*, Br. 24), in fact the allowance is paid pursuant to a state regulation providing for the payment of a flat monthly "training allowance";[1] recipients are free

[1]The allowance described in the text is the one made available to full-time trainees. With respect to persons participating in a part-time training plan, the regulation provides an allowance for transportation at the rate of 10 cents (now 15 cents) per mile with a

to use the allowance as they please and are entitled to the full amount of the allowance without regard to whether they incur any travel or other incidental training expenses. See Appellants' brief in No. 75-1355, at 7 and App. D, p. 6a; see also our opening brief at 14-15.

Accordingly, appellees' insistence that they are litigating only with respect to an allowance "for necessary travel," if taken at face value, must mean that they contest the Secretary's treatment not of the training allowance generally but only of that portion of each recipient's allowance that, in any given month, is actually expended on travel.[2] Appellees never explicitly narrow their disagreement with the Secretary to that point, but such a delimitation is implicit in much of what they say.[3]

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maximum of $44 (now $45) per month. See Appellants' brief in No. 75-1355, App. D, p. 6a. Since appellee Hein appears to have received the full $44 allowance each month without any showing of actual travel expenses, it appears that she was a full-time trainee.

[2]There appears to be no direct evidence on the amounts the appellees spend on necessary travel. The state parties and appellees stipulated only that appellee Hein's "training plan * * * provided * * * for a monthly Work and Training allowance for necessary commuting under said plan in the maximum allowable flat amount of $44" (App. 24). This may indicate that appellee Hein expended at least $44 each month on commuting, or it may reflect a legal misunderstanding, *i.e.*, that the training allowance was merely a transportation allowance, and say nothing about the amounts appellee Hein actually spent on travel. That the latter is the case is suggested by the fact that the appellee class was defined broadly as "all persons receiving *transportation allowances* * * *" (App. 32, n. 1; emphasis added).

[3]The district court's order could be read as speaking only to the narrow question of the treatment of the portion of training allowances actually expended for travel. The court enjoined the Secretary from "including in the monthly net income of any person * * * any amount received * * * as reimbursement for necessary commuting expenses * * *" (J.S. App. B, p. 25a). We have read that order in the context of this

If this is indeed appellees' position, *i.e.*, that the Secretary is required to exclude only that portion of the training allowance that the recipient uses for travel, they necessarily have conceded the propriety of including the training allowances in their incomes in the first instance (see our opening brief at 19-25), for the case reduces to the question whether the Secretary, after properly including training allowances in income, must allow a deduction for actual educational or training transportation expenses.

We address the latter question generally at pages 25-32 of our opening brief. In summary, we show that the Secretary appropriately has disallowed deductions for most nonfood expenses because the statutory eligibility criterion is "income," not "residuary food purchasing power" (at 26-28); that the disallowance of commutation expenses is particularly appropriate in view of the extent to which such expenses may reflect personal choice (at 28-30); and that the disallowance of such expenses is not arbitrary or contrary to a congressional intention to encourage education (at 30-32).[4]

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case as requiring exclusion of training allowances generally, under the theory that the court had simply mistook those allowances for travel allowances. A different reading is possible, however: it may be that the court intended only to order the Secretary to provide an exclusion or deduction on account of transportation expenses actually incurred by individuals who receive training allowances, and for that reason used the term "reimbursement" even though individuals receiving an allowance pursuant to a full-time training plan are not required to provide an accounting of expenses.

[4]The last sentence on page 30 of our opening brief contains a printing error. The word "appropriate" in that sentence should be "inappropriate," so that the sentence should read:

> Thus, it is not inappropriate to allow an itemized deduction for tuition to those households incurring such expense, while affording to all households only a standard deduction to cover incidental expenses.

Appellees apparently take serious issue only with the last of these three propositions. They do not suggest that nonfood expenses generally, or even all commuting expenses, should be deductible. Their principal contention is that education and training commuting costs are special and that their disallowance "works at cross-purposes with Title XX of the Social Security Act * * *" (Br. 20; see generally Br. 17-22).

This is not, of course, an argument that the Secretary's regulations are inconsistent with the authorizing statute. Nothing in the Food Stamp Act requires special treatment of the incidental expenses of education, and we have shown in our opening brief that disallowance of such expenses, like the disallowance of many other expenses that may serve a worthwhile purpose, both is consistent with the purpose of the Act to allocate benefits on the basis of "income" and serves the ends of efficient administration.

Moreover, appellees point to nothing in the legislative history or language of Title XX of the Social Security Act that suggests Congress wanted the Secretary to amend the food stamp program to exclude from recipients' income all or some special part of the grants they received through Title XX programs. Congress' silence on this point is eloquent as to its intent. Congress has exempted certain kinds of public assistance from inclusion in income for purposes of determining food stamp benefits. See 7 C.F.R. 271.3 (c)(1)(ii). Congress also has provided that benefits received under the Food Stamp Act shall not be used to decrease other "welfare grants or other similar aid." 7 U.S.C. 2019 (d). But Congress made no similar provision with respect to the treatment of the training allowances received by appellees. If Congress had intended the Secretary to make special provision with respect to such training allowances, it would have made its intention explicit.

At bottom, therefore, appellees' argument is little more than an expression of what they regard to be sound social policy, joined to a plea that this Court legislate that policy now that Congress has failed to do so. But they make no convincing showing of any principled basis for such a judicial intrusion into the realm of welfare policy.[5]

For the reasons stated here and in our opening brief, the judgment of the district court should be reversed.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

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[5]Appellees do assert that the Secretary's disallowance of education and training transportation expenses is unconstitutional (Br. 30-35), but their discussion of that point necessarily is little more than reiteration of their disagreement with the Secretary's decision on the level of policy. Those constitutional arguments are anticipated at pages 32-38 of our opening brief.

(There is a printing error in our discussion of the constitutional question. The second line of the first full paragraph on page 35 is out of place. The first sentence of that paragraph should read: "Nor should the Secretary be required to allow an itemized deduction for all commutation expenses, merely in order to achieve maximum parity between all households insofar as the treatment of that narrow class of expenses is concerned.")

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